WRIT PETITION NO. 861 (M/S) OF 2003

Smt.Manisha and another ---------- Petitioners

Versus

Principal Judge, Family Court and another---- Respondents

Hon'ble M.M.Ghildiyal J.

Heard Sri J.P.Joshi learned counsel for the petitioners.

The petitioners have challenged the order dated 10.7.2003 passed by the Principal Judge, Family Court, Dehradun in rejecting the application of the petitioner for interim maintenance on the ground that affidavits have been exchanged but the arguments could not be concluded and the petitioners are not facing extra ordinary difficulties in not getting maintenance allowance.

Proviso to section 125 of the Code of Criminal Procedure which was added by Act no. 50 of 2001 provides as under:-

> "Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct;
>
> Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person."

In view of the above proviso the learned Judge has erred in rejecting the application of the petitioners. The impugned order dated 10.7.2003 passed by the Judge, Family Court, Dehradun is quashed. The learned Judge is directed to decide the application of the petitioners afresh.

With these observations the writ petition is disposed of finally.

(M.M.Ghildiyal J.)

September 9, 2003
MPS